

SAN DIEGO COUNTY  
Deferred Compensation Plan

As Amended and Restated  
Effective January 1, 2002

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS .....	1
1.1 “Account” .....	1
1.2 “Alternate Payee” .....	1
1.3 “Annuity Contract” .....	1
1.4 “Beneficiary” .....	1
1.5 “Board of Supervisors” .....	2
1.6 “Code” .....	2
1.7 “Compensation” .....	2
1.8 “Custodial Account” .....	2
1.9 “Custodian” .....	2
1.10 “Deferrals” .....	2
1.11 “Deferral Account” .....	2
1.12 “Deferred Compensation Administrator” .....	2
1.13 “Effective Date” .....	2
1.14 “Eligible Deferred Compensation Plan or Eligible Plan” .....	2
1.15 “Eligible Employee” .....	2
1.16 “Employee” .....	3
1.17 “Employer” .....	3
1.18 “Includable Compensation” .....	3
1.19 “Investment Manager” .....	3
1.20 “Normal Retirement Age” .....	4
1.21 “Participant” .....	4
1.22 “Participation Agreement” .....	4
1.23 “Payroll” .....	4
1.24 “Plan” .....	4
1.25 “Plan Year” .....	5
1.26 “Provider” .....	5
1.27 “QDRO” .....	5
1.28 “Rollover Account” .....	5
1.29 “Rollover Contributions” .....	5
1.30 “Severance from Employment” .....	5
1.31 “Trust” .....	5
1.32 “Trustee” .....	5
1.33 “Unforeseeable Emergency” .....	5
ARTICLE 2. PARTICIPATION .....	5
2.1 Eligibility for Participation .....	5
2.2 Enrollment .....	5
2.3 Reemployment .....	6
ARTICLE 3. BENEFICIARIES .....	6
3.1 Beneficiary Designation .....	6

3.2	Failure to Designate a Beneficiary .....	6
ARTICLE 4. RETIREMENT BENEFITS.....		6
4.1	Participant Contributions.....	6
4.2	Account. ....	10
ARTICLE 5. PAYMENT OF BENEFITS.....		10
5.1	Eligibility.....	10
5.2	Distribution and Deferral.....	10
5.3	Form of Benefit Payment. ....	11
5.4	Failure to Elect - Default Distribution Schedule. ....	12
5.5	Plan-to-Plan Transfers.....	12
5.6	Required Beginning Date. ....	13
5.7	Direct Rollovers .....	14
5.8	Deferral of Payment of Benefits During a Period of Consideration of Domestic Relations Order; Distribution to an Alternate Payee Under a QDRO .....	15
5.9	Election to Receive Small Amounts.....	15
5.10	Service Credit .....	15
5.11	Unforeseeable Emergencies .....	15
5.12	Ceasing Benefit Payments on Reemployment. ....	16
ARTICLE 6. PLAN INVESTMENTS. ....		17
6.1	Investment Responsibilities and Directions .....	17
6.2	Investments.....	17
6.3	Provider(s), Trustee and Custodian(s).....	17
6.4	Participant Direction of Investments.....	17
6.5	California Government Code Section 53213.5 Requirements .....	17
ARTICLE 7. FIDUCIARIES AND ADMINISTRATION .....		17
7.1	Plan Sponsor and Administrator.....	17
7.2	Administrative Responsibilities .....	17
7.3	The Powers and Duties of the Deferred Compensation Administrator.....	18
7.4	Delegation of Fiduciary Responsibilities .....	19
7.5	Service in Multiple Fiduciary Capacities .....	19
7.6	Expenses of the Plan.....	19
7.7	Indemnification .....	19
ARTICLE 8. AMENDMENT AND TERMINATION OF THE PLAN.....		19
8.1	Future of the Plan .....	19
8.2	Amendments to the Plan.....	20
8.3	Termination of the Plan.....	20
8.4	Allocation of Plan Assets on Plan Termination .....	20
ARTICLE 9. CLAIMS AND REVIEW PROCEDURES .....		20
9.1	Application for Benefits .....	20
9.2	Hearing .....	21
9.3	Notice of Denial .....	21

9.4	Request for Review .....	22
9.5	Decision on Review.....	22
9.6	Exhaustion of Administrative Remedies; Limitations .....	23
ARTICLE 10. GENERAL PROVISIONS .....		23
10.1	Limitation on Assignment .....	23
10.2	Representations .....	23
10.3	Gender and Number .....	23
10.4	Employer's Authority to Bring Suit .....	23
10.5	Information and Reports to Participants .....	23
10.6	Applicable Law .....	24
10.7	No Employment Rights Conferred .....	24
10.8	Service on Plan; Limitations on Actions Against Plan .....	24
10.9	Plan Office; Records .....	24
10.10	Form of Applications, Elections and Other Communications .....	24
10.11	Merger, Consolidation and Transfer of Assets or Liabilities .....	24
10.12	Payments of Benefits to Infants or Incompetents .....	24

## SAN DIEGO COUNTY

### DEFERRED COMPENSATION PLAN

WHEREAS, the County of San Diego (the “Employer”) has adopted the San Diego County Deferred Compensation Plan (“the Plan”) to provide retirement benefits to Eligible Employees; and

WHEREAS, the Plan’s retirement benefits are intended to comply with the eligible deferred compensation requirements of section 457(b) of the Code as amended by the Small Business Job Protection Act of 1996 which requires that the assets of a “457(b) plan” sponsored by a state governmental agency satisfy certain trust requirements, the assets of which may not be subject to the claims of creditors; and

WHEREAS, the Employer wishes to amend and restate the Plan for changes to the Plan made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) adopted by the Employer, technical corrections to EGTRRA made by the Job Creation and Worker Assistance Act of 2002 and to reflect guidance provided in proposed regulations under section 457 of the Code issued in May 2002, and to amend the Plan for other desired changes.

NOW, THEREFORE, effective generally on January 1, 2002 except as otherwise stated or required by law, the Employer does hereby amend and restate the Plan as set forth in the following pages.

### ARTICLE 1. DEFINITIONS

The following terms when used herein shall have the following meaning, unless a different meaning is clearly required by the context. Certain terms are also defined within the text of the Plan.

1.1 “Account” means a Participant’s Deferral Account and, if applicable, Rollover Account, established for each Participant.

1.2 “Alternate Payee” means any spouse, former spouse, child or other dependent of a Participant who is recognized by a QDRO as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to the Participant.

1.3 “Annuity Contract” means an annuity contract, either fixed and/or variable issued by an Provider which satisfies the requirements of section 457(g)(3) of the Code.

1.4 “Beneficiary” means the person(s) or estate entitled to receive benefits after the death of a Participant.

1.5 “Board of Supervisors” means the Board of Supervisors of the County of San Diego as constituted from time to time.

1.6 “Code” means the Internal Revenue Code of 1986, as amended and including all regulations promulgated pursuant thereto.

1.7 “Compensation” means the total remuneration earned by an Eligible Employee for personal services rendered to the Employer while a Participant for the calendar year including amounts deferred under the Plan and any other Eligible Deferred Compensation Plan sponsored by the Employer.

1.8 “Custodial Account” means the account established by separate written agreement between the Employer (or the Deferred Compensation Administrator, as applicable) and the Custodian which satisfies the requirements of section 457(g)(3) of the Code.

1.9 “Custodian” means the bank, trust company or other person authorized to hold the assets of a Custodial Account in accordance with section 401(f) of the Code and the regulations thereunder.

1.10 “Deferrals” means, with respect to a calendar, the annual amount of Compensation that a Participant defers pursuant to a properly executed Participation Agreement.

1.11 “Deferral Account” means the account maintained for a Participant to which a Participant’s Deferrals, earnings, gains and losses, are credited, adjusted for withdrawals or other amounts determined by the Deferred Compensation Administrator.

1.12 “Deferred Compensation Administrator” means the San Diego County Treasurer or its delegate or such other person or entity appointed by the Board of Supervisors of the Employer as provided in Section 7.1.

1.13 “Effective Date” of this amended and restated Plan shall generally mean January 1, 2002. However, provisions applicable to the satisfaction of the trust requirement of Section 4.2.2 are effective no later than the date required by law, and provisions related to the Small Business Job Protection Act of 1996 and subsequent legislation are effective on the date provided by statute.

1.14 “Eligible Deferred Compensation Plan or Eligible Plan” or “Eligible Plan” means any plan defined in section 457(b) of the Code maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and includes the Plan among others.

1.15 “Eligible Employee” shall mean each Employee. However, the term “Eligible Employee” does not include:

- (a) An Employee who is a nonresident alien with respect to the United States and who derives no earned income with a United States source from the Employer;

(b) Any individual who is not on the Payroll of the Employer and who, at any time and for any reason, is deemed to be an Employee; or

(c) Any individual subject to a written agreement that provides that such individual shall not be eligible to participate in the Plan; or

(d) An Employee of a group, division, or other classification designated by the Employer (or the Deferred Compensation Administrator) as ineligible to participate in the Plan.

An individual's status as an Eligible Employee shall be determined by the Deferred Compensation Administrator in its sole discretion and such determination shall be conclusive and binding on all persons. If, during any period, the Deferred Compensation Administrator has not treated an individual as an Employee and, for that reason, employment taxes have not been withheld with respect to that individual, then that individual shall not be an Eligible Employee for that period, even in the event that the individual is determined, retroactively, to have been an Employee during all or any portion of that period.

1.16 "Employee" means any person employed by the Employer as a common law employee.

1.17 "Employer" means the County of San Diego.

1.18 "Includable Compensation" of a Participant means, with respect to a calendar year, the Participant's compensation, as defined in section 415(c)(3) of the Code, for services performed for the Employer. By way of example, but not limitation, it means the Eligible Employee's wages, salary, and other amounts received for personal services rendered in the course of employment with the Employer to the extent includable in gross income. However, Includable Compensation includes certain amounts not includable in gross income, such as amounts deferred under the Plan or other Employer-sponsored Eligible Deferred Compensation Plan, before-tax contributions made under an Employer-sponsored flexible benefits plan in accordance with section 125 of the Code, employee contributions to an Employer-sponsored tax-sheltered annuity plan qualified under section 403(b) of the Code, and amounts which the Eligible Employee defers to purchase qualified transportation fringe benefits under section 132(f)(4) of the Code. Includable Compensation does not include, however, amounts "picked up" by the Employer pursuant to section 414(h)(2) of the Code.

A Participant's Includable Compensation for a calendar year shall be determined without regard to any community property laws.

1.19 "Investment Manager" means a fiduciary designated by the Deferred Compensation Administrator, to whom has been delegated the responsibility and authority to manage, acquire or dispose of the investments described in Section 6.2. An Investment Manager must be either:

(a) registered as an investment advisor under the Investment Advisors Act of 1940; or

- (b) a bank as defined in the Investment Advisors Act of 1940; or
- (c) an insurance company qualified to perform investment advisory services under the laws of more than one state.

In addition, an Investment Manager must acknowledge in writing that he is a fiduciary with respect to the management, acquisition and control of such investments.

1.20 “Normal Retirement Age” means age 70 ½, unless the Participant has, prior to a Severance from Employment, elected an alternate Normal Retirement Age in accordance with procedures established by the Deferred Compensation Administrator. A Participant’s Normal Retirement Age determines the period during which a Participant may utilize the Normal Retirement Age Catch-up of Section 4.1.4 of the Plan. Once a Participant has to any extent utilized the Normal Retirement Age Catch-up of Section 4.1.4 of the Plan, his or her Normal Retirement Age may not be changed and is the same for all Eligible Deferred Compensation Plans of the Employer.

Except as otherwise provided in this Section 1.20, a Participant’s Normal Retirement Age may not be earlier than the earliest date the Participant will become eligible to retire under the San Diego County Employees Retirement Association without actuarial or similar reduction in benefits because of retirement, but in no event later than age 70 ½. Notwithstanding the foregoing, the Normal Retirement Age of a Participant who is a qualified police or firefighter (as determined under section 457 of the Code and the regulations thereunder) may not be earlier than age 40, but in no event later than age 70 ½.

1.21 “Participant” means an Eligible Employee or former Eligible Employee who is or has been enrolled in the Plan and who retains the right to benefits under the Plan.

1.22 “Participation Agreement” means the agreement between a Participant and the Employer to defer receipt by the Participant of Compensation not yet paid or made available. Such agreement shall state, among other information required by the Deferred Compensation Administrator, the Deferral amount to be withheld from a Participant’s paycheck.

Notwithstanding any other provision of the Plan to the contrary, deferrals of sick pay, vacation pay or back pay are permitted only if a Participation Agreement providing for the deferral is entered into prior to the month in which such amounts would otherwise be paid or made available and the Participant is an Eligible Employee in that month.

1.23 “Payroll” means the system used by the Employer to pay those individuals it regards as its common law employees for their services and to withhold employment taxes from the compensation it pays to such common law employees. “Payroll” does not include any system the Employer uses to pay individuals whom it does not regard as its common law employees and for whom it does not actually withhold employment taxes (including, but not limited to, individuals it regards as independent contractors) for their services.

1.24 “Plan” means the San Diego County Deferred Compensation Plan, as amended from time to time.



1.25 “Plan Year” means the twelve-month period beginning January 1 and ending December 31.

1.26 “Provider” means any organization appointed by the Deferred Compensation Administrator and approved by the Board of Supervisors of the County of San Diego to provide services and benefits under the Plan.

1.27 “QDRO” means a qualified domestic relations order as defined in Code section 414(p).

1.28 “Rollover Account” means the account, if any, maintained for a Participant to which a Participant’s Rollover Contributions, earnings, gains and losses, are credited, adjusted for withdrawals or other amounts determined by the Deferred Compensation Administrator.

1.29 “Rollover Contributions” means the amount, if any, contributed by a Participant to the Plan pursuant to the provisions of Section 4.1.9.

1.30 “Severance from Employment” means the Participant’s termination from service with the Employer within the meaning of section 457(d)(1)(A)(ii) of the Code, or on account of the Participant’s death or retirement.

1.31 “Trust” means a trust created by a separate written agreement between the Employer (or the Deferred Compensation Administrator, as applicable) and a Trustee which meets the requirements of section 457(g) of the Code.

1.32 “Trustee” means the Employer (or the Deferred Compensation Administrator) or such other person, persons or entity selected by the Employer who agrees to act as Trustee.

1.33 “Unforeseeable Emergency” means severe financial hardship to a Participant (or a Participant’s Beneficiary in the event of the Participant’s death) resulting from a sudden and unexpected illness or accident of the Participant (or Beneficiary), the Participant’s spouse (or the Beneficiary’s spouse) or of a dependent (as defined in section 152(a) of the Code) of the Participant (or Beneficiary), loss of the Participant’s (or the Beneficiary’s) property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant (or Beneficiary) as defined in section 457 of the Code and as provided in regulations thereunder.

## **ARTICLE 2. PARTICIPATION**

2.1 Eligibility for Participation. Each Eligible Employee may elect to become a Participant by enrolling pursuant to Section 2.2.

2.2 Enrollment. Each Eligible Employee may enroll in the Plan by completing a Participation Agreement and such other forms as may be required by the Deferred Compensation Administrator. If the Participation Agreement and other required forms are received by the end of the month, enrollment will be effective as soon as administratively practicable but in no event earlier than the first day of the next following month. Such election shall continue until

modified, disallowed or revoked in accordance with the terms of the Plan, or until the Participant has a Severance from Employment.

2.3 Reemployment. A former Employee who is reemployed as an Eligible Employee shall be eligible to become a Participant with respect to his or her new period of employment in the same manner as a new Eligible Employee and in accordance with the provisions of Sections 2.1 and 2.2.

### **ARTICLE 3. BENEFICIARIES**

3.1 Beneficiary Designation. A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time, in accordance with procedures established by the Deferred Compensation Administrator. Such designation, amendment or revocation shall be effective as provided under such procedures; provided, however, that such designation, amendment or revocation shall be effective no earlier than the date the designation, amendment or revocation is received by the Deferred Compensation Administrator.

3.2 Failure to Designate a Beneficiary. If the Participant fails to designate a Beneficiary or if no designated Beneficiary survives the Participant and benefits are payable following the Participant's death, then (i) the spouse of the deceased Participant shall be the Beneficiary, or (ii) if the Participant has no spouse living at the time of such payment, the then living children of the Participant shall be the Beneficiaries in equal shares or (iii) if the Participant has neither a spouse or a child living at the time of payment, the estate of the Participant shall be the Beneficiary.

### **ARTICLE 4. RETIREMENT BENEFITS**

#### **4.1 Participant Contributions**

4.1.1 Deferral Contributions. Pursuant to a Participation Agreement, each Participant's Deferrals shall be deducted from his or her paycheck. The Deferrals shall not be included as gross income on a Participant's federal income tax withholding statement (W-2 Form) for the calendar year in which the Deferrals are made but may be included as wages on a Participant's federal income tax withholding statement for purposes of Medicare and Old Age Survivor Disability Insurance, if applicable.

#### **4.1.2 Maximum Deferrals**

(a) Primary Limitation. The Deferrals made in any calendar year may not exceed the lesser of:

(i) \$11,000 (as adjusted for increases pursuant to section 457(e)(15) of the Code), or

(ii) 100% of the Participant's Includable Compensation.

(b) Coordination with Other 457(b) Plans. If a Participant participates in more than one Eligible Deferred Compensation Plan, the total deferrals under all such plans shall be subject to the maximum limitations specified in Section 4.1.2(a).

#### 4.1.3 Age 50 Catch-Up.

(a) Primary Limitation. Any Participant who has attained age 50 before the end of a calendar year may make additional Deferrals to the Plan for such calendar year if his or her contributions are otherwise limited by the application of Section 4.1.2 above. Additional Deferrals shall be made in accordance with section 414(v) of the Code. This additional Deferral is not available in the years in which the Participant's contribution limitation could be determined under Section 4.1.4 and the Normal Retirement Age Catch-Up contribution amount under Section 4.1.4 would be larger than the amount available under this Section 4.1.3.

(b) Coordination with Other 457(b) Plans. If a Participant participates in more than one Eligible Deferred Compensation Plan of the Employer, the total deferrals under all such plans shall be subject to the maximum limitations specified in this Section 4.1.3

#### 4.1.4 Normal Retirement Age Catch-Up.

(a) Plan Ceiling. For one or more of the Participant's last three calendar years ending before she or he attains Normal Retirement Age under the Plan, the maximum deferral shall be the lesser of (1) or (2):

(1) twice the applicable annual dollar amount in effect under section 457(e)(5) of the Code, or

(2) the "Underutilized Amount" described in Section 4.1.4(b) below.

(b) Underutilized Amount. The Underutilized Amount is determined under section 457(b)(3) of the Code and Treasury Regulations thereunder which are hereby incorporated by reference. The Underutilized Amount is, generally, the sum of (1) and (2) as follows:

(1) the dollar limitation determined under Section 4.1.2 for the calendar year; plus

(2) the dollar limitation determined under Section 4.1.2 (or the dollar limitation determined under section 457(b)(2) for any year before January 1, 2002) for any prior calendar year or years, less the amount of annual deferrals under the Plan for such prior calendar year or years (but not counting any annual deferrals under the Plan permitted under Section 4.1.3). A prior calendar year shall be taken into account under this

subsection only if it is a year beginning after December 31, 1978, in which the Participant was eligible to participate in the Plan and in which Compensation deferred under the Plan (if any) during the year was subject to the dollar limitation determined under Section 4.1.2 (or the dollar limitation determined under section 457(b)(2) for any year before January 1, 2002).

(c) Coordination Limit for Years Prior to 2002. For purposes of determining the Underutilized Amount for years prior to 2002, all plans of all employers that the Participant contributed to must be coordinated, and therefore the limitation described in Section 4.1.2 and the limitation described in this Section 4.1.4 for years before 2002 are reduced, for purposes of determining a Participant's Underutilized Amount under the Plan, by amounts excluded from a Participant's income by reason of a salary reduction or elective deferral under any other Eligible Deferred Compensation Plan, section 401(k) qualified cash or deferred arrangement, section 402(h)(1)(B) simplified employee pension (SARSEP), section 403(b) annuity contract, and section 408(p) simple retirement account, or a deductible contribution to an organization described in section 501(c)(18) of the Code (the "Pre-2002 Coordination Plans"). Similarly, in applying the section 457(b)(2)(B) limitation on Includable Compensation for years prior to 2002, the limitation is 33-1/3% percent of the Participant's compensation includable in gross income.

(d) Special Rule Where No Annual Deferrals Under the Plan. A Participant who, although eligible, did not defer any Compensation under the Plan in any given year before 2002 is not subject to the coordinated deferral limit described in Section 4.1.4(c), even though the Participant may have deferred compensation under one of the other Pre-2002 Coordinated Plans. A Participant is treated as not having deferred Compensation under the Plan for a prior calendar year if all annual Deferrals under the Plan are distributed in accordance with Section 4.1.5 below. However, the Participant will be treated as having deferred amounts in a prior calendar year for purposes of determining the Underutilized Amount described in 4.1.4(b) above for that prior calendar year, but only to the extent that the Participant's salary reduction contributions or elective deferrals under all Pre-2002 Coordination Plans have not exceeded the maximum deferral limitations in effect under Code section 457(b) for that prior calendar year.

#### 4.1.5 Excess Deferrals.

(a) Deferral in Excess of Plan Limitation. If an amount is contributed on behalf of a Participant to the Plan or any other Eligible Deferred Compensation Plan of the Employer which exceeds the limitation of Sections 4.1.2, 4.1.3 and 4.1.4 above (an "Excess Deferral"), the Plan shall correct the excess by distributing the Excess Deferral to the Participant, with allocable income, as soon as administratively practicable after the Deferred Compensation Administrator determines that the amount is an Excess Deferral.

(b) Deferral in Excess of Individual Limitation. If an amount is contributed on behalf of a Participant to the Plan, which, when combined with amounts contributed on behalf of the Participant to any other Eligible Deferred Compensation Plan of another employer, exceeds the limitation of Sections 4.1.2, 4.1.3 and 4.1.4 above, the Plan may, at the discretion of the Deferred Compensation Administrator, correct the excess by distributing the Excess Deferral to the Participant, with allocable income, as soon as administratively practicable after the Deferred Compensation Administrator determines that the amount is an Excess Deferral.

4.1.6 Minimum Deferral. A Participant must comply with any minimum deferral requirements which may be set by the Deferred Compensation Administrator.

4.1.7 Modification or Revocation of Deferral Election. A Participant may modify or revoke the Participation Agreement with respect to future Deferrals by filing a new Participation Agreement and such other forms as the Deferred Compensation Administrator may require. If the new Participation Agreement and other required forms are received by the end of the month, any such modification or revocation shall be effective as soon as administratively practicable but in no event earlier than the first pay period following the first day of the next following month. A Participant's request for a distribution in the event of an Unforeseeable Emergency shall in addition be treated as a request for revocation of Deferrals as of a date determined by the Deferred Compensation Administrator.

A Participant who has received all of his or her Account, as set forth in Article 5, or revokes his or her Participation Agreement as set forth in this Section 4.1.7 above, may again become a Participant by executing in an open enrollment period authorized by the Deferred Compensation Administrator, a new Participation Agreement to defer Compensation not yet paid in accordance with this Section 4.1.7.

4.1.8 Military Leave Contributions. A former Participant who is reemployed by the Employer and entitled to rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") shall be permitted to make additional Deferrals under the Plan during the "period of payment", which period is the period (i) beginning on the date of the Eligible Employee's reemployment with the Employer and (ii) ending on the date which is three times the period of "qualified military service" as defined in USERRA, which resulted in USERRA rights; provided, however, that the period of payment may not be more than five years. If the Deferred Compensation Administrator cannot reasonably determine the Compensation the Participant would have earned had employment continued, the Deferrals shall be made upon the assumption that the Participant has continued to earn the same average rate of Compensation as in effect during the twelve months (or period of employment, if shorter) immediately preceding the commencement of such leave. No Deferrals made pursuant to this Section may exceed the amount the Participant would have been permitted to make had the Participant remained continuously employed by the Employer throughout the period of USERRA leave.

4.1.9 Rollover Contributions. Notwithstanding any other provision of the Plan, the Plan will accept a direct rollover or a Participant contribution of an eligible rollover

distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code, and from an Eligible Deferred Compensation Plan. However, no after-tax contributions will be accepted. In addition, the Plan will accept a Participant rollover contribution of a portion of the distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in the gross income of the Participant. Any and all amounts contributed by a Participant pursuant to this Section 4.1.9 shall be credited to an individual Rollover Account. The Participant shall be entitled to the full value of his or her Rollover Account at the time of a distribution pursuant to Article 5.

#### 4.2 Account.

4.2.1 Establishment of Accounts. The Deferred Compensation Administrator shall establish and maintain an Account with respect to each Participant.

4.2.2 Plan Assets Held in a Manner Satisfying Code Section 457(b) Trust Requirements. All assets of the Plan shall held in Trust, in a Custodial Account or applied to purchase one or more Annuity Contract(s) for the exclusive benefit of Participants and their Beneficiaries. In no event shall the amounts so held or applied be subject to the rights or claims of any creditor of the Employer, nor shall any portion of such amounts be used in any manner for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

4.2.3 Valuation of Accounts. Each Participant's Account shall be valued at least once each Plan Year and each Participant shall receive written notice of his or her Account balance following such valuation. Account balances shall reflect the Deferrals, any earnings or losses attributable to such amount, and shall be reduced by any withdrawals, administration, investment and other fees, in such amounts and at such times as the Deferred Compensation Administrator deems necessary for the maintenance of the Plan.

### **ARTICLE 5. PAYMENT OF BENEFITS.**

5.1 Eligibility. The value of a Participant's Account may be payable to the Participant within a reasonable period following the Participant's:

5.1.1 Severance from Employment;

5.1.2 Unforeseeable Emergency; and

5.1.3 Attainment of age 70 ½, whether or not still employed.

5.2 Distribution and Deferral. Upon becoming eligible in accordance with Section 5.1 hereof, distribution is subject to the following guidelines:

5.2.1 Unless the Participant fails (or the Participant's Beneficiary in the event of the Participant's death) to make any election or if the Participant (or Beneficiary) elects a

postponed distribution commencement date pursuant to Section 5.2.2 below, the Participant's Account shall be, or shall commence to be, distributed not later than sixty (60) days after the close of the Plan Year in which the Participant's Account first becomes eligible for distribution pursuant to Section 5.1.1 or 5.1.3 of the Plan. If a Participant fails to make any election, distribution shall commence in accordance with Section 5.4 hereof.

5.2.2 A Participant (or the Participant's Beneficiary in the event of the Participant's death) may elect to postpone the commencement date specified in the election made pursuant to Section 5.2.1 to a later date if such election is made, in accordance with procedures established by the Deferred Compensation Administrator, prior to the original commencement date specified in Section 5.2.1. In addition, any Participant entitled to be paid from the Plan after the year 2001 may modify any previously irrevocable payment election at any time and may instead defer commencement in accordance with this subsection. However, the timing of payments to a Participant or Beneficiary hereunder are subject to the provisions of Section 5.6, "Required Beginning Date."

5.2.3 A Participant may elect to postpone distribution, even after using the Normal Retirement Age Catch-Up provision of Section 4.1.4.

5.3 Form of Benefit Payment. A Participant or Beneficiary may elect the form of payment of benefits within 60 days before the benefit commencement date, and may revoke that election (with or without a new election) at any time during the 60 days before the benefit commencement date, but in no event later than the benefit commencement date, by notifying the Deferred Compensation Administrator in writing, subject to the Deferred Compensation Administrator's approval. Notwithstanding the preceding sentence, failure to designate a payment method at least 90 days prior to the date payments are to commence may cause a delay in the payment of benefits.

Except as provided in Section 5.6, a Participant or Beneficiary may elect any one of the following optional forms of benefit payment, if available under the applicable Annuity Contract or other funding vehicle:

(a) Lump Sum. A single payment of the entire balance in a Participant's Account.

(b) Payment for a specified period. Substantially non-increasing periodic payments over a specified period of years, but not in excess of the Participant's allowable life expectancy.

(c) Equal Installments. Amounts payable in equal installments, which may be paid monthly, quarterly, semi-annually or annually.

(d) Partial Payment. Lump sum payment of partial balance of account. If this payment method is selected, an additional payment must also be selected for the balance remaining in the Participant's account.

(e) Life Annuity. An annuity payable during the Participant's lifetime.

(f) Life Annuity with Period Certain Guaranteed. An annuity payable during the lifetime of the Participant, or his or her Beneficiary, with the guarantee that if at the Participant's death payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary. The guaranteed period to be elected must be either ten (10), fifteen (15) or twenty (20) years but may not exceed the life expectancy of the Participant and his or her spousal Beneficiary.

(g) Joint and Survivor Annuity. An annuity payable during the lifetime of the Participant and the Participant's a spousal Beneficiary.

(h) Other Payment Options. Any form of distribution elected by the Participant and approved by the Deferred Compensation Administrator, provided that such option must provide for substantially non-increasing payments for any period after the commencement date and meet the requirements of Section 5.6.

Distribution from the Plan must be made primarily for the benefit of Participants. Any payment form under this Section 5.3 must be such that benefits payable to a Beneficiary are "incidental." Benefits payable to a Beneficiary are incidental if the payments satisfy the incidental death benefit requirements specified in Section 401(a)(9)(G) of the Code and regulations thereunder.

#### 5.4 Failure to Elect - Default Distribution Schedule.

5.4.1 Participant. If a Participant fails to elect a form of payment before the benefit commencement date, the Participant shall be deemed to have elected, pursuant to Section 5.2.1, to postpone distribution of his or her benefit until the year in which the Participant attains age 70 ½. Upon attaining age 70 ½, payments shall commence for a specified period of ten (10) years as provided for in Option (b) of Section 5.3. Notwithstanding the foregoing, Accounts not exceeding \$5,000 shall be subject to earlier distribution in accordance with Section 5.9.

5.4.2 Beneficiary. If the Beneficiary fails to elect a form of payment before the benefit commencement date, payments shall be made to the Beneficiary in accordance with the Option (b) of Section 5.3 over a ten (10) year period.

5.5 Plan-to-Plan Transfers. The Plan will allow a direct transfer to another Eligible Deferred Compensation Plan of a governmental employer of the amount due a former Participant under the Plan at the Participant's election and in accordance with procedures established by the Deferred Compensation Administrator and section 457 of the Code and Treasury Regulations thereunder. A transfer with respect to a Participant is permitted if both plans agree to the transfer, the Participant has had a Severance from Employment with the Employer, and the Participant will have an amount deferred after the transfer at least equal to the amount deferred immediately before the transfer.



## 5.6 Required Beginning Date.

5.6.1 General Rule. The entire interest of the Participant will be distributed, or commence to be distributed, not later than April 1 following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Participant retires, (referred to herein as the “Required Beginning Date”).

### 5.6.2 Limitation on Distribution.

(a) Notwithstanding any other provision of the Plan, distributions shall be made in a form under which:

(i) the amount distributed each year, commencing with the Required Beginning Date, must be at least the level amount determined by applying the Participant’s entire interest to the purchase of an annuity contract commencing payments at least annually on or before the Required Beginning Date;

(ii) if provision is made for the payment of a portion of the benefits to a Beneficiary, the amount payable to the Participant will be paid at times specified by the Secretary of the Treasury, which are not later than the times determined under regulations issued pursuant to section 401(a)(9)(G) of the Code pertaining to the minimum distribution incidental benefit requirements; and

(iii) any amount not distributed to the Participant during his or her life will be distributed after the death of the Participant, at least as rapidly as the method being used under Section 5.3 as of the date of death.

(b) If distribution first commences after the Participant’s death under Section 5.1, the Participant’s entire interest must be distributed over a period not to exceed (i) the Beneficiary’s life or life expectancy, if the Beneficiary is the Participant’s surviving spouse and if distributions commence on or before the date the deceased Participant would have attained age 70 ½, (ii) the life expectancy of the Beneficiary, if the Beneficiary is not the Participant’s surviving spouse and if distributions commence within one year of the date of the Participant’s death in equal or substantially equal payments, or (iii) the lesser of 5 years from the date of the Participant’s death or the Beneficiary’s life expectancy, if subsections (b)(i) and (ii) of this paragraph are inapplicable. For purposes of this subsection, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the remainder of the interest becomes payable to the surviving spouse when the child reaches the age of majority.

(c) The Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code that were proposed by the Internal Revenue Service in January 2001, notwithstanding any provision of the Plan to the contrary until the end of the last calendar year beginning before the effective date of final and temporary regulations under section 401(a)(9) of the Code that were published on

April 17, 2002 (including Treasury Regulation sections 1.401(a)(9)-1 through 1.401(a)(9)-9), or such other date specified in guidance published by the Internal Revenue Service, at which time the final and temporary regulations under section 401(a)(9) of the Code shall apply. Thereafter, distributions under the Plan shall be made in accordance with the requirements of section 401(a)(9) of the Code, including the incidental death benefits requirement of section 401(a)(9)(G), and Treasury Regulation sections 1.401(a)(9)-1 through 1.401(a)(9)-9, and such Code and Treasury Regulation provisions shall override any distribution options under the Plan that are inconsistent with such provisions. For purposes of this Section, life expectancies will be computed by use of the expected return multiples as published in the applicable Treasury Regulations, using the calculation methods required therein, and as described in the applicable regulations under section 401(a)(9) of the Code.

5.7 Direct Rollovers. Effective on and after January 1, 2002, an eligible recipient may elect, at the time and in the manner prescribed by the Deferred Compensation Administrator, to have any portion of an eligible rollover distribution from the Plan paid directly to an eligible retirement plan in a direct rollover, as described in section 401(a)(31) of the Code. As used herein, the following terms have the following meanings:

(a) “Eligible recipient” means a Participant, the Participant’s surviving spouse, and the Participant’s spouse or former spouse who is an Alternate Payee pursuant to a QDRO.

(b) “Eligible rollover distribution” has the meaning prescribed in section 402(f)(2)(A) of the Code, which generally includes any distribution from the Plan. However, any amount distributed from the Plan for an Unforeseeable Emergency shall not be an eligible rollover distribution.

(c) “Eligible retirement plan” means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and that accepts the distributee’s eligible rollover distribution and which agrees to separately account for amounts transferred into such plan from the Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a QDRO.

(d) “Direct rollover” means a payment by the Plan to a single eligible retirement plan specified by the eligible recipient, including payment effected by delivering to the eligible recipient a check made payable to the eligible retirement plan’s custodian or trustee.

The notice required hereunder will be provided to a Participant no less than 30 days and no more than 90 days before the date of distribution is to occur.

5.8 Deferral of Payment of Benefits During a Period of Consideration of Domestic Relations Order; Distribution to an Alternate Payee Under a QDRO. Notwithstanding any other provision of the Plan, to the extent permitted by section 414(p) of the Code and other applicable law, the Deferred Compensation Administrator may defer payment of the Participant's benefits beyond the date otherwise provided in the Plan in the event that the Deferred Compensation Administrator, in his, her or its discretion, determines that such deferral is necessary for it to consider whether a domestic relations order is a QDRO under section 414(p) of the Code (taking into account the special rule under section 414(p)(11) of the Code for governmental plans) or when the Deferred Compensation Administrator becomes informed that an Alternate Payee is seeking such an order with respect to the Participant's benefits. All such determinations shall be made in accordance with procedures established by the Deferred Compensation Administrator.

An Alternate Payee may elect to take a distribution of his or her interest in the Participant's Account in such form as he or she may elect pursuant to Section 5.4 as soon as administratively practicable after the date the Deferred Compensation Administrator determines the order is a QDRO, but in no event later than the date the Participant or the Participant's Beneficiary (as applicable) commences to receive the Participant's Plan benefits.

5.9 Election to Receive Small Amounts. Notwithstanding the other provisions of this Article 5, a Participant may elect to receive (or, at the discretion of the Deferred Compensation Administrator, the Plan may distribute to the Participant without the Participant's consent) the full amount of the Participant's Account if (i) the amount of the Participant's Deferral Account does not exceed the limitation under section 411(a)(11)(A) of the Code, (ii) no amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of the distribution, and (iii) there has been no prior distribution under the Plan to such Participant to which this Section 5.9 applied.

5.10 Service Credit. A Participant may direct the transfer of his or her Account (or portion thereof) to a governmental defined benefit plan for the purchase of permissive service credits in accordance with section 457(e)(17) of the Code.

5.11 Unforeseeable Emergencies. Notwithstanding any other provision of the Plan to the contrary, if the Deferred Compensation Administrator has determined that a Participant or a Beneficiary has incurred a genuine Unforeseeable Emergency and that no other resources of financial relief are available, the Deferred Compensation Administrator may grant, in its sole discretion, the Participant's or Beneficiary's request for a payment from the Participant's or Beneficiary's Account. Any payment made under this provision shall be in a lump sum.

(a) The Deferred Compensation Administrator shall have the right to request and review all pertinent information necessary to assure that Unforeseeable Emergency distribution requests are consistent with the provisions of section 457 of the Code.

(b) In no event, however, shall an Unforeseeable Emergency distribution be made if such emergency may be relieved:

(1) through reimbursement or compensation by insurance or otherwise;

(2) by liquidation of the Participant's assets, to the extent the liquidation of the Participant's assets would not itself cause a severe financial hardship; or

(3) by cessation of Deferrals under the Plan; or

(4) if allowed, by taking out a loan under the Plan, provided that the repayment of such loan does not itself cause financial hardship.

(c) The amount of any Unforeseeable Emergency distribution shall not exceed the lesser of:

(1) the amount reasonably necessary, as determined by the Deferred Compensation Administrator, to satisfy the emergency (and such amount may include applicable taxes and penalties which apply as a result of the distribution); or

(2) the amount of the Participant's Account.

(d) The Deferred Compensation Administrator may suspend the Participant's salary deferral election during the pendency of the Participant's request for a Unforeseeable Emergency distribution. Payment of a Unforeseeable Emergency distribution shall result in mandatory suspension of Deferrals for a minimum of six (6) months from the date of payment (or such other period as mandated in Treasury Regulations).

(e) Except to the extent authorized in Treasury Regulations the following events are not considered Unforeseeable Emergencies under the Plan:

(1) enrollment of a child in college;

(2) purchase of a house;

(3) purchase or repair of an automobile;

(4) marital separation or divorce; or

(5) bankruptcy except when resulting directly and solely from illness or casualty loss.

5.12 Ceasing Benefit Payments on Reemployment. A former Eligible Employee who is reemployed as an Eligible Employee may, in accordance with procedures established by the Deferred Compensation Administrator for this purpose, make a one time irrevocable election to cease benefit payments, if any, begun following his or her previous Severance from Employment. Thereafter, the Participant's Account shall be payable in accordance with the terms of this Article 5.

## **ARTICLE 6. PLAN INVESTMENTS.**

6.1 Investment Responsibilities and Directions. The Deferred Compensation Administrator shall have exclusive authority and discretion to manage the investments described in Section 6.2 except that the Deferred Compensation Administrator may appoint a Trustee or an Investment Manager to manage the investment of all or any portion of such investments.

6.2 Investments. All contributions under the Plan shall be invested solely in Annuity Contract(s), held in Trust or in a Custodial Account, as provided in Section 4.2.2 each of which shall be intended to provide Plan benefits. With respect to such Annuity Contract(s), Trust or Custodial Account, the Deferred Compensation Administrator shall authorize the type of investments in accordance with Section 6.1.

6.3 Provider(s), Trustee and Custodian(s). The Provider(s), Trustee or Custodian(s) shall be selected by the Deferred Compensation Administrator and may be changed in the discretion of the Deferred Compensation Administrator at any time.

6.4 Participant Direction of Investments. Notwithstanding any other provision of this Article 6, a Participant or Beneficiary may elect, in accordance with procedures established by the Deferred Compensation Administrator, to direct the investment of his or her Accounts among investment options established by the Deferred Compensation Administrator. The initial allocation requests may be made at the time of enrollment. Investment allocation requests shall remain effective until changes are made in accordance with the provisions of this Section 6.4. A Participant or Beneficiary may change his or her allocation request by notifying the Deferred Compensation Administrator in writing in the manner and form prescribed by the Deferred Compensation Administrator for this purpose. Such changes shall become effective as soon as administratively practicable.

6.5 California Government Code Section 53213.5 Requirements. The Plan is intended to comply with California Government Code section 53213.5, which provides that the Employer and the trustee shall be relieved of responsibility under the terms of the Plan and trust for losses in a Participant's Accounts. This relief applies where a Participant individually directs the investment of his or her Accounts and the Employer complies with communication and education requirements similar to those prescribed in section 404(c) of the federal Employee Retirement Income Security Act of 1974, as amended.

## **ARTICLE 7. FIDUCIARIES AND ADMINISTRATION**

7.1 Plan Sponsor and Administrator. The Employer is the plan sponsor of the Plan. The County Treasurer of the County of San Diego is the Deferred Compensation Administrator of the Plan who operates and administers the Plan on a day-to-day basis.

7.2 Administrative Responsibilities. The Deferred Compensation Administrator has the authority to control and manage the operation and administration of the Plan. The Deferred Compensation Administrator shall make such rules, regulations and computations and shall take such other actions to administer the Plan as the Deferred Compensation Administrator may deem

appropriate. Such rules, interpretations, computations and actions shall be final, conclusive and binding on all persons. The Deferred Compensation Administrator shall have sole discretionary authority to interpret the terms of the Plan and to determine eligibility for benefits pursuant to the objective criteria set forth in the Plan. In administering the Plan, the Deferred Compensation Administrator shall at all times discharge its duties with respect to the Plan in accordance with the applicable fiduciary standards under California state law.

7.3 Powers and Duties. The powers and duties of the Deferred Compensation Administrator shall include, but not be limited to, the following:

- (a) Construe and interpret the Plan in accordance with uniform rules and regulations;
- (b) Decide the eligibility of any person to be covered under the Plan, determine the right of any person to a benefit and determine the amount, manner and time of any benefit, in accordance with the provisions of the Plan;
- (c) Determine the qualified status of domestic relations orders and to administer distributions under QDROs (in accordance with section 414(p) of the Code);
- (d) Prescribe procedures to be followed by Participants and Beneficiaries in filing applications for benefits;
- (e) Prescribe procedures for redress of denied claims to be afforded to Participants and Beneficiaries under the Plan, pursuant to Article 10;
- (f) Maintain, or cause to be maintained, records showing the Plan's fiscal operations and Employees' employment, service and benefits;
- (g) Issue directions to the Provider, Trustee or Custodian in connection with all benefits that are to be paid in accordance with the provisions of the Plan;
- (h) Require from the Employer and Eligible Employees such information as shall be necessary for the proper administration of the Plan;
- (i) Furnish to the Employer appropriate periodic reports covering the Plan's administration;
- (j) Appoint or remove advisors to the Plan, including attorneys, accountants or consultants, to render advice or to perform services with regard to its responsibilities under the Plan, as it shall determine to be necessary or desirable;
- (k) File necessary reports with the Internal Revenue Service; and

(l) Designate by written instrument (signed by both parties) one or more persons to carry out, where appropriate, fiduciary responsibilities under the Plan.

7.4 Delegation of Fiduciary Responsibilities. The Deferred Compensation Administrator may engage such attorneys, actuaries, accountants, consultants, investment advisors or other persons to render advice or to perform services with regard to its responsibilities under the Plan as it shall determine to be necessary or appropriate. The Deferred Compensation Administrator may designate by written instrument signed by both parties one or more persons to carry out, where appropriate, fiduciary responsibilities of the Deferred Compensation Administrator. The duties and responsibilities under the Plan of the Deferred Compensation Administrator not delegated to other fiduciaries pursuant to the foregoing sentence shall be carried out by the agents of the Deferred Compensation Administrator, acting on behalf of and in the name of the Deferred Compensation Administrator in their capacities as agents and not as individual fiduciaries. Without limiting the generality of the foregoing, the Deferred Compensation Administrator shall designate the persons or groups of persons who shall carry out the responsibilities of the Deferred Compensation Administrator under the Plan as the agents of the Deferred Compensation Administrator, and the Deferred Compensation Administrator as principal shall be responsible for the acts of such agents.

7.5 Service in Multiple Fiduciary Capacities. Nothing herein shall prohibit any person or group of persons from serving in more than one fiduciary capacity with respect to the Plan.

7.6 Expenses of the Plan. All expenses of administering the Plan shall be paid out of Plan assets, except for such expenses as are paid by the Employer. The Deferred Compensation Administrator shall have complete and unfettered discretion to determine whether an expense of the Plan shall be paid out of Plan assets or by the Employer, and the Deferred Compensation Administrator's discretion and authority to direct the payment of expenses out of Plan assets shall not be limited in any way by any prior decision or practice regarding payment of the expenses of the Plan.

7.7 Indemnification. To the fullest extent permitted by law, the Employer agrees to indemnify, defend and hold harmless the Deferred Compensation Administrator and the employees of the Employer who administer the Plan, individually and collectively, against any liability whatsoever for any action taken or omitted by them in good faith in connection with the Plan or their duties hereunder and for any expenses or losses for which they may become liable as a result of any such actions or non-actions unless resultant from their own willful misconduct; and the Employer may purchase a bond and liability insurance to cover any of their potential liabilities with regard to the Plan.

## **ARTICLE 8. AMENDMENT AND TERMINATION OF THE PLAN**

8.1 Future of the Plan. The Employer expects to continue the Plan indefinitely. Future conditions, however, cannot be foreseen, and the Employer, through resolution of its duly authorized representatives, reserves the right to amend or terminate the Plan at any time

retroactively or prospectively; provided, however, the Deferred Compensation Administrator shall have the authority to amend the Plan as necessary or desirable to maintain the status of the Plan as an Eligible Deferred Compensation Plan or to facilitate the administration or operation of the Plan to the extent such amendment would not materially increase the cost of the Plan or significantly alter the benefits payable under the Plan.

8.2 Amendments to the Plan. No amendment of the Plan shall (i) reduce the benefit of any Participant accrued under the Plan prior to the date the amendment is adopted, except to the extent that a reduction in accrued benefits may be permitted by the Code and other applicable laws, or (ii) divert any part of the assets of the Plan to purposes other than the exclusive purposes of providing benefits to Participants and Beneficiaries who have an interest in the Plan and of defraying the reasonable expenses of administering the Plan.

8.3 Termination of the Plan. On termination of the Plan, no part of the Plan assets shall revert to the Employer or be used for or diverted to purposes other than the exclusive purposes of providing benefits to affected Participants, surviving spouses and Beneficiaries who have an interest in the Plan and of defraying the reasonable expenses of administering the Plan and such termination. On termination of the Plan, each Participant's Account shall remain fully vested and nonforfeitable. On termination of the Plan, the Plan shall continue until all Plan assets have been distributed as provided in Article 5. After such termination neither the Employer nor any other person shall have any liability or obligation to provide benefits hereunder in excess of the value of the Plan assets. Upon such termination, Participants and Beneficiaries shall obtain benefits solely from Plan assets.

8.4 Allocation of Plan Assets on Plan Termination. On termination of the Plan, the Accounts of each Participant shall be distributed as provided in Article 5.

## **ARTICLE 9. CLAIMS AND REVIEW PROCEDURES**

9.1 Application for Benefits. All claims for benefits and all inquiries concerning the Plan, or concerning present or future rights to benefits under the Plan, shall be submitted in writing to the Deferred Compensation Administrator. Applications for benefits must be made on the forms prescribed by the Deferred Compensation Administrator and signed by the Participant or the Participant's Beneficiary, as applicable. Any application for benefits under the Plan shall be submitted to the Deferred Compensation Administrator addressed as follows:

County Treasurer  
Deferred Compensation Administrator  
County of San Diego Defined Contribution Savings Plan  
1600 Pacific Highway, Room 112  
San Diego, California 92101

Such application for benefits may also be submitted by computer to such address and on such terms established by the Deferred Compensation Administrator.



9.2 Hearing. The Deferred Compensation Administrator may rule on the benefits application solely on the basis of the application of the Participant or Beneficiary. In the event the Deferred Compensation Administrator determines it is necessary to hold a hearing regarding any benefit determination, the Deferred Compensation Administrator may appoint either one of its agents or a member of the State Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing (which may be delivered electronically by computer), to the Deferred Compensation Administrator his proposed findings of fact and recommended decision.

(a) The proposed findings of fact and recommendations of the referee shall be served on the parties who shall have 10 days to submit written objections thereto which shall be incorporated in the record considered by the Deferred Compensation Administrator.

(b) Upon receiving the proposed findings of fact and the recommendations of the referee, the Deferred Compensation Administrator may:

(1) Approve and adopt the proposed findings and the recommendations of the referee; or

(2) Require a transcript or summary of all the testimony, plus all other evidence received by the referee.

(c) Upon the receipt thereof the Deferred Compensation Administrator shall:

(1) Take such action as in its opinion is indicated by such evidence; or

(2) Refer the matter back with or without instructions to the referee for further proceedings; or

(3) Set the matter for hearing before itself. At such hearing the Deferred Compensation Administrator shall hear and decide the matter as if it had not been referred to the referee.

9.3 Notice of Denial. In the event that any application for benefits is denied in whole or in part, the Deferred Compensation Administrator shall notify the applicant in writing (which notice may be delivered electronically by computer) of his or her right to an independent review of the denial. Such written notice shall set forth, in a manner calculated to be understood by the applicant, specific reasons for the denial, specific references to the Plan's provisions on which the denial is based, a description of any information or material necessary to perfect the application, an explanation of why such material is necessary, and an explanation of the Plan's review procedure.

An application shall be granted or written notice of a denial shall be given to the applicant within ninety (90) days after the Deferred Compensation Administrator receives a proper application, unless special circumstances require an extension of time for processing the application. In no event shall such an extension exceed a period of 90 days from the end of the

initial 90-day period. If such an extension is required, written notice thereof (which may be delivered electronically by computer) shall be furnished to the applicant before the end of the initial 90-day period. Such notice shall indicate the special circumstances requiring an extension of time and the date by which the Deferred Compensation Administrator expects to render a decision. If an application is neither granted nor denied within the time period prescribed by this Section 9.3, such application shall be deemed denied.

9.4 Request for Review. Any person whose application for benefits is denied in whole or in part (or such person's duly authorized representative) may appeal from the denial by submitting to the Deferred Compensation Administrator a request for an independent review of such application within six months after receiving written notice of the denial. The Deferred Compensation Administrator shall give the applicant or such representative an opportunity to review pertinent documents (except legally privileged materials) in preparing such request for review and to submit issues and comments in writing. The request for review shall be in writing and shall be addressed as follows:

County Treasurer  
Deferred Compensation Administrator  
County of San Diego Defined Contribution Savings Plan  
1600 Pacific Highway, Room 112  
San Diego, California 92101

Such request for review may also be submitted electronically by computer to such address and on such terms established by the Deferred Compensation Administrator.

The request for review shall set forth all of the grounds on which it is based, all facts in support of the request and any other matters which the applicant deems pertinent. The Deferred Compensation Administrator may require the applicant to submit such additional facts, documents or other material as he or she may deem necessary or appropriate in making a review.

Any review of a denied application shall be conducted by a panel of three or more individuals who did not take part in the initial denial of such application. Such individuals shall be designated by the Deferred Compensation Administrator.

9.5 Decision on Review. The Deferred Compensation Administrator shall act upon each request for review within sixty (60) days after receipt thereof, unless special circumstances require an extension of time for processing, but in no event shall the decision on review be rendered more than 120 days after the Deferred Compensation Administrator receives a proper request for review. If such an extension is required, notice thereof shall be furnished to the applicant in writing (which notice may be delivered electronically by computer) before the end of the initial sixty (60) day period. The Deferred Compensation Administrator shall give prompt, written notice of the decision to the applicant. In the event that the denial of the application for benefits is affirmed in whole or in part, such notice shall set forth, in a manner calculated to be understood by the applicant, the specific reasons for such denial and specific references to the Plan's provisions on which the decision is based.

9.6 Exhaustion of Administrative Remedies; Limitations. No legal or equitable action for benefits under the Plan shall be brought unless and until the claimant

- (a) has submitted a written application for benefits in accordance with Section 9.1,
- (b) has been notified that the application is denied as provided in Section 9.3,
- (c) has filed a written request for an independent review of the application in accordance with Section 9.4, and
- (d) has been notified in writing that the denial of the application was affirmed as provided in Section 9.5;

provided, however, that such an action may be brought if the claim has not been acted upon within the time period prescribed by Section 9.5.

## **ARTICLE 10. GENERAL PROVISIONS**

10.1 Limitation on Assignment. Except as provided in Section 5.8, benefits under the Plan may not be assigned, sold, transferred, or encumbered, and any attempt to do so shall be void. A Participant's or Beneficiary's interest in benefits under the Plan shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process.

10.2 Representations. The Employer does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in the Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee successful investment of Deferrals, and shall not be required to repay any loss which may result from such investment or lack of investment.

10.3 Gender and Number. As used in the Plan, the masculine, feminine, or neuter gender, the singular or plural number and the use of the collective or the separate shall each be deemed to include the others whenever the context so indicates.

10.4 Employer's Authority to Bring Suit. The Employer in its discretion may bring suit on behalf of Plan Participants to enforce any right or obligation under the Plan or under any applicable law.

10.5 Information and Reports to Participants. Each Participant shall be advised periodically of the general provisions of the Plan, to the extent required by law. The Deferred Compensation Administrator shall also furnish to any Participant or Beneficiary, upon written request, such information regarding the Plan and such person's benefits hereunder as may be required by law, but may require payment of a reasonable charge covering the cost of providing such data, to the extent permitted by law.

10.6 Applicable Law. The Plan shall be construed and enforced in accordance with applicable California state laws and the Code and any other applicable federal law.

10.7 No Employment Rights Conferred. Nothing in the Plan is intended to give any person any right to remain in the employ of the Employer or to affect any person's legal rights respecting employment by the Employer.

10.8 Service on Plan; Limitations on Actions Against Plan. Valid service of any legal process on the Deferred Compensation Administrator shall constitute service of process on the Plan. Any legal proceedings against the Plan, shall be commenced within one year, or within any greater period allowed by applicable laws, after the cause of action arises, and if not commenced within the applicable period described above, shall be deemed abandoned and forever barred.

10.9 Plan Office; Records. The records of the Plan shall be maintained on a Plan Year basis. The principal office of the Plan, where all Plan records shall be kept, shall be located at the Deferred Compensation Administrator's principal office. Copies of all documents constituting a part of the Plan and any related documents shall also be made available at other locations, to the extent required by law. The Deferred Compensation Administrator shall allow any Participant or Beneficiary reasonable access to any documents under which the Plan is established or operated, if a request for such access is made in accordance with the Deferred Compensation Administrator's written procedure.

10.10 Form of Applications, Elections and Other Communications. All applications, authorizations, designations, elections, instructions or any other communications required or permitted of any person under the Plan shall be submitted to the Deferred Compensation Administrator in such form and manner and at such time as the Deferred Compensation Administrator may require and, if the Deferred Compensation Administrator deems it necessary or advisable, shall include the consent of such person's spouse (if any).

10.11 Merger, Consolidation and Transfer of Assets or Liabilities. The Plan may be merged or consolidated with any other plan, and the assets and liabilities of the Plan may be transferred to any other plan at the discretion of the Employer.

10.12 Payments of Benefits to Infants or Incompetents. If the Deferred Compensation Administrator determines that any individual entitled to payments under the Plan is an infant or is incompetent by reason of a physical or mental disability, then it may cause all payments thereafter becoming due to such individual to be made to any other person for such individual's benefit, without responsibility for the application of amounts so paid. Payments made pursuant to this Section 10.12 shall completely discharge the Employer.